

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

IN RE:	§	
	§	
JULIET HOMES, LP,	§	Case No. 07-36424-H1-7
	§	(Chapter 7)
Debtor	§	
	§	
	§	
IN RE:	§	
	§	
JULIET GP, LLC,	§	Case No. 07-36426-H1-7
	§	(Chapter 7)
Debtor	§	
	§	
	§	
IN RE:	§	
	§	
DOUGLAS A. BROWN,	§	Case No. 07-36422-H1-7
	§	(Chapter 7)
Debtor	§	
	§	

**TRUSTEES' FIFTH MOTION FOR APPROVAL OF COMPROMISE
AND SETTLEMENT AGREEMENTS BETWEEN
TRUSTEES AND BROWN DEFENDANTS**

NOTICE PURSUANT TO LOCAL BANKRUPTCY RULE 9013(b)

THIS MOTION SEEKS AN ORDER THAT MAY ADVERSELY AFFECT YOU. IF YOU OPPOSE THE MOTION, YOU SHOULD IMMEDIATELY CONTACT THE MOVING PARTY TO RESOLVE THE DISPUTE. IF YOU AND THE MOVING PARTY CANNOT AGREE, YOU MUST FILE A RESPONSE AND SEND A COPY TO THE MOVING PARTY. YOU MUST FILE AND SERVE YOUR RESPONSE WITHIN 21 DAYS OF THE DATE THIS WAS SERVED ON YOU. YOUR RESPONSE MUST STATE WHY THE MOTION SHOULD NOT BE GRANTED. IF YOU DO NOT FILE A TIMELY RESPONSE, THE RELIEF MAY BE GRANTED WITHOUT FURTHER NOTICE TO YOU. IF YOU OPPOSE THE MOTION AND HAVE NOT REACHED AN AGREEMENT, YOU MUST ATTEND THE HEARING. UNLESS THE PARTIES AGREE OTHERWISE, THE COURT MAY CONSIDER EVIDENCE AT THE HEARING AND MAY DECIDE THE MOTION AT THE HEARING.

REPRESENTED PARTIES SHOULD ACT THROUGH THEIR ATTORNEY.

TO THE HONORABLE MARVIN ISGUR, UNITED STATES BANKRUPTCY JUDGE:

COME NOW Joseph M. Hill, Trustee (“Juliet Trustee”) of the bankruptcy estates of Juliet Homes, LP and Juliet GP, LLC (“Juliet Debtors” or “Juliet”) and Janet S. Northrup, Trustee as Successor Trustee (“Brown Trustee”) of the bankruptcy estate of Douglas A. Brown (“Doug Brown”), seeking approval to compromise and settle various causes of action and claims with Defendants (i) Doug Brown, (ii) Erica Zemaitis Brown, and (iii) Victor Zemaitis (collectively, the “Brown Defendants”), showing as follows:

I. RELIEF REQUESTED

1. Pursuant to Federal Rule of Bankruptcy Procedure 9019, the Juliet Trustee and Brown Trustee (collectively, “Trustees”) request approval of their settlements and compromises of controversy with the Brown Defendants. While the Brown Defendants have agreed to the proposed compromises, the factual recitations set forth herein are solely those of the Trustees and are not necessarily agreed to by the Brown Defendants.

II. PROCEDURAL BACKGROUND

2. On September 20, 2007, an involuntary petition for relief was filed under Chapter 7 of the United States Bankruptcy Code against each of the Juliet Debtors. On the same date, an involuntary petition for relief was filed under Chapter 7 of the United States Bankruptcy Code against Brown.

3. On October 19, 2007, the Juliet Debtors and Brown consented to the entry of an order for relief and converted their cases to Chapter 11. On October 31, 2007, the Bankruptcy Court entered Orders for Relief in the Juliet Debtors’ and Brown’s bankruptcy cases (together, the “Bankruptcy Cases”).

4. The Juliet Trustee was subsequently appointed as Chapter 11 Trustee. At the request of the Juliet Trustee, the Juliet Debtors' cases were converted to Chapter 7 cases.

5. On December 5, 2007, Doug Brown moved to convert his case to Chapter 7, and on December 19, 2007, the Bankruptcy Court converted Brown's case to Chapter 7. Thereafter, the Brown Trustee was appointed Successor Trustee of Brown's Chapter 7 estate.

6. Doug Brown waived his discharge on January 14, 2009, which waiver was accepted by this Court by order entered on February 25, 2009.

7. Trustees commenced multiple Adversary Proceedings based on allegations that the Juliet Debtors and the Brown Defendants were engaged in a Ponzi scheme in which certain insiders, investors and/or partners received funds that Trustees are entitled to recover pursuant to federal and state law. These Adversary Proceedings include:

- Adv. No. 09-3429, Joseph M. Hill, Trustee et al. v. Alex Oria, et al.
- Adv. No. 09-3432, W. Steve Smith, Trustee et al. v. Douglas Allen Brown, et al.
- Adv. No. 09-3433, W. Steve Smith, Trustee et al. v. Douglas Allen Brown, et al.
- Adv. No. 09-3434, W. Steve Smith, Trustee et al. v. Douglas Allen Brown, et al.
- Adv. No. 09-3435, W. Steve Smith, Trustee et al. v. Eric Putnam, et al.
- Adv. No. 09-3436, W. Steve Smith, Trustee et al. v. Eric Putnam, et al.
- Adv. No. 09-3437, W. Steve Smith, Trustee et al. v. Eric Putnam, et al.
- Adv. No. 09-3438, W. Steve Smith, Trustee v. Lawrence H. Ramming, et al.
- Adv. No. 09-3439, W. Steve Smith, Trustee v. Lawrence H. Ramming, et al.
- Adv. No. 09-3440, W. Steve Smith, Trustee v. Lawrence H. Ramming, et al.
- Adv. No. 09-3441, Joseph M. Hill, Trustee et al. v. Alex Oria, et al.
- Adv. No. 09-3442, Joseph M. Hill, Trustee et al. v. Alex Oria, et al.
- Adv. No. 09-3443, Joseph M. Hill, Trustee et al. v. Alex Oria, et al.
- Civil Action No. H-12-840, Joseph M. Hill, Trustee, et al. v. Alex Oria, et al.¹

(collectively, the "Adversary Proceedings"). The Adversary Proceedings were consolidated and

¹ Adv. Nos. 09-3429, 09-3432, 09-3433, 09-3434, 09-3435, 09-3436, 09-3437, 09-3438, 09-3439, 09-3440, 09-3441, and 09-3442 were consolidated into Adv. No. 09-3429. On March 12, 2012, this Court stated its intention to recommend that the reference from the District Court be withdrawn in Adv. No. 09-3429 and later issued a certification to the District Court on January 28, 2014. Civil Action No. H-12-840 is the District Court suit that resulted from the withdrawal of the reference.

the reference of them withdrawn to the U.S. District Court, thereby initiating Civil Action No. H-12-840, *Joseph M. Hill, Trustee, et al. v. Alex Oria, et al.*, which is pending before the Honorable Sim Lake. Reference to the “Adversary Proceedings” in this Motion includes Civil Action No. H-12-840 wherever the context requires.

7. The Brown Defendants were named defendants in one or more of the adversary proceedings. After mediation and Trustees’ review of financial information provided, Trustees have entered into a settlement agreement with Doug Brown, Erica Zemaitis Brown, and Victor Zemaitis as described more particularly below.

III. PROPOSED SETTLEMENT

8. Douglas Brown and his business partner, Bernie Kane, were the persons primarily responsible for the operation of Juliet Homes and its affiliated companies from their inception through the entry of orders for relief in the three captioned bankruptcy cases. Erica Zemaitis Brown is now the wife of Doug Brown and is alleged to have been his girlfriend during part of this time. Victor Zemaitis is the father of Erica Brown.

9. The Trustees filed identical complaints against Doug and Erica Brown in each of the three bankruptcy cases, thereby commencing Adversary Proceedings Numbers 09-03432, 09-03433, and 09-03434. Trustees also commenced Adversary Proceedings Numbers 09-03435, 09-03436, and 09-03437 against Victor Zemaitis by filing the same complaint in each of the three bankruptcy cases. Trustees’ allegations against Doug and Erica Brown and against Victor Zemaitis are set forth in detail in the complaints filed in those proceedings, which are incorporated by reference into this motion and may be reviewed for additional detail. By way of summary, in those and the other Adversary Proceedings, Trustees alleged that Douglas Brown used the Juliet Homes entities and their affiliated companies as sources of money for his personal

use to fund a lavish lifestyle, including luxury cars and homes. Juliet Homes was funded in part by private investors who made capital contributions into multiple partnerships or joint ventures with the promise of the return of their investment plus “profits” from the construction of the real estate project for which the capital was provided. Trustees alleged that Doug Brown directed the transfer of funds to pay some of his “preferred investors” who invested millions of dollars in Juliet Homes projects that were not profitable and that the source of payment for such funds was new investors’ money from other projects. In short, the Trustees alleged that Doug Brown helped orchestrate a Ponzi scheme that could not sustain the enormous transfers made and that collapsed with the subprime market in 2007.

10. Trustees also alleged that Doug Brown orchestrated the transfer of title of funds and real estate to Erica Brown and to Victor Zemaitis, sometimes as “straw buyers” who became record owners of properties using Juliet Homes or Doug Brown’s funds and with the intention of selling the properties back to Juliet Homes when real buyers became available. Trustees’ complaints also recite that Erica Brown received unearned commissions from property sales.

11. In the adversary proceedings against Victor Zemaitis, Trustees alleged that Zemaitis acted as a “straw buyer” for Juliet Homes and received transfers of no less than \$25,000 that are avoidable as preferences, fraudulent conveyances, or under an unjust enrichment theory.

12. Following protracted litigation with the Brown Defendants and others, and after having been ordered to mediation by U.S. District Judge Sim Lake, the Brown Defendants and the Trustees began settlement negotiations in May 2014 with the assistance of the mediator. Trustees requested and received financial information from Doug and Erica Brown and, after evaluation of that information, agreed to a settlement by which Doug Brown would enter into an agreed judgment in the principal amount of \$2.5 million and the Trustees’ claims against Erica

Brown and Victor Zemaitis would be dismissed. The terms of the settlement are set forth more fully in the settlement agreement attached **Exhibit 1** and incorporated by reference as if fully set forth herein. The proposed agreed judgment is attached to Exhibit 1. In summary, the settlement provides that Trustees may submit for the Court's entry the agreed judgment and obtain the dismissal of Erica Brown and Victor Zemaitis. Trustees have agreed to accept \$1.5 million in full satisfaction of the judgment if Doug Brown delivers good funds to the Trustees within one year of the entry date of the judgment. Other than the obligations contained within the settlement agreement and as detailed in the settlement agreement, the parties release each other of claims.

13. Trustees seek approval of their compromise with the Brown Defendants as fair and equitable to the estates and their creditors and pursuant to the factors set forth in *Protective Committee For Independent Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414 (1968) is as follows:

(a) Probability of success in litigation, with consideration given to the uncertainty in fact and in law. The settlement with Doug Brown and his entry into an agreed judgment ensures success for the Trustees. The settlement results in not only a liquidated judgment of \$2.5 million plus prejudgment interest against Doug Brown, but also Doug Brown's agreement that the judgment is non-dischargeable in any subsequent bankruptcy. Trustees believe that they could prevail in prosecution of their claims against Doug Brown, Erica Brown, and Victor Zemaitis if the claims were tried.

(b) Complexity, expense and likely duration of litigation. If not for the settlement with the Brown Defendants, this litigation would no doubt require more than two weeks of a trial and hundreds of hours of preparation as well as attendant expense for briefing, expert preparation

and testimony, and related trial expenses. The evidence presented would be complex and require the tracing of hundreds of transfers from the accounts of Juliet Homes and its affiliates to the three Brown Defendants. Following the withdrawal of the reference and this Court's certification of the case as ready for trial, U.S. District Judge Sim Lake conducted a scheduling conference and ordered the parties to mediation. Judge Lake recently scheduled trial to commence in early January 2015. Resolution of the dispute with the Brown Defendants, if not for the settlement, will therefore not occur until some time in 2015 and then possibly be subject to appeals following that. The settlement with the Brown Defendants expedites the resolution of one of the biggest claims in the Adversary Proceedings and avoids the expenditure of limited estate resources for trial expenses.

(c) Other factors relevant to a full and fair assessment of the wisdom of the proposed compromise. The settlement with the Brown Defendants provides a certain judgment against Doug Brown and his agreement and judgment that provides that the judgment is not dischargeable in any subsequent bankruptcy. Brown and his wife Erica purport to be judgment-proof, and their sworn affidavits of financial condition provided to the Trustees support their claim of an inability to pay a judgment at this time. Trustees' claims against Victor Zemaitis may be limited to \$25,000 based upon the complaints filed against him. Zemaitis is currently undergoing cancer treatment in Florida, where he resides. Any judgment against Victor Zemaitis, as with Doug and Erica Brown, would be subject to execution in Florida, where they also reside. Given the apparent lack of assets of Doug and Erica Brown to satisfy a larger judgment, the time and expense associated with a trial and possible appeal to attempt to obtain (i) a larger judgment than \$2.5 million against Doug Brown, (ii) at most a \$25,000 judgment against Victor Zemaitis, and (iii) a judgment in a to-be-liquidated amount against Erica Brown, the

Trustees' considered opinion is that the \$2.5 million judgment against Doug Brown and the release of Erica Brown and Victor Zemaitis are in the best interests of the estates and their creditors.

IV. PRAYER

14. For all the reasons set forth above, Trustees believe that the proposed settlement agreements are in the best interests of the estates and their creditors. Trustees respectfully request that the Court grant this motion and enter an order approving the compromises. Trustees respectfully request all other relief to which they are justly entitled.

Date: September 30, 2014

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on the 1st day of October, 2014, a true and correct copy of this Motion was served by first class mail or ECF on (i) the United States Trustee, (ii) the IRS, (iii) the Chapter 7 Trustees, (iv) Debtors' counsel, (v) the 20 largest unsecured creditors of each Debtor, and (vi) all persons who filed notices of appearance, all of whom are identified on the attached list. Notice of the filing of this motion was served on all creditors as set forth more fully in the Notice filed contemporaneously with this Motion.

/s/ Susan H. Jacks

Susan H. Jacks

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